

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GERALD SWEARINGEN,

Civ. No. 07-651-HO

Plaintiff,

ORDER

v.

RENT-A-CENTER,

Defendant.

Plaintiff is a former employee of defendant. Plaintiff's tort claims arise from alleged post-employment statements by defendant's agents that plaintiff embezzled money and stole property from defendant, and that plaintiff would be going to prison. Defendant filed a motion to dismiss or stay proceedings and compel arbitration.

Background

The "MUTUAL AGREEMENT TO ARBITRATE CLAIMS" signed by the parties provides,

The Company and I mutually consent to the resolution by arbitration of all claims or controversies ("claims"), past, present or future, whether or not arising out of my application for employment, assignment/employment,

or the termination of my assignment/employment that . .
. I may have against . . . the Company . . ."

* * *

the claims covered by this Agreement include . . . tort
claims . . .

* * *

The Arbitrator, and not any federal, state or local
court or agency, shall have exclusive authority to
resolve any dispute relating to the interpretation,
applicability, enforceability or formation of this
Agreement including, but not limited to any claim that
all or any part of this Agreement is void or voidable.

Spratt Decl., ex. 1 at 1-3.

Discussion

The parties dispute whether they agreed (1) to arbitrate
plaintiff's claims, and (2) that the arbitrator is to decide
whether they agreed to arbitrate plaintiff's claims.

"The question whether the parties have submitted a
particular dispute to arbitration, i.e., the question of
arbitrability, is an issue for judicial determination unless the
parties clearly and unmistakably provide otherwise." Howsam v.
Dean Witter Reynolds, Inc., 537 U.S. 79, 83 (2002) (internal
quotations omitted).

Plaintiff contends that nothing in the agreement clearly and
unmistakably provides that the arbitrator shall decide whether
claims are subject to arbitration, and that he does not attack
the interpretation, applicability or enforceability of the
agreement as it relates to the claims identified in the
agreement. The dispute over whether plaintiff's claims are
subject to arbitration relates to the interpretation and

applicability of the agreement, which the parties clearly and unmistakably agreed that the arbitrator shall have exclusive authority to decide.

Plaintiff notes that defendant's own authority demonstrates that judges on this court have determined whether certain claims are within the scope of arbitration agreements identical to the parties' agreement. See Gray v. Rent-A-Center West, Inc., civ. no. 06-1508-HU (D. Or.) (Findings & Recommendation dated October 23, 2006); Fontaine v. Rent-A-Center West, Inc., civ. no. 05-1485-KI (Order dated January 13, 2006); Pliska v. Rent-A-Center West, Inc., civ. no. 05-1155-AS (Findings & Recommendation dated November 21, 2005). These written decisions do not address the contract language providing the arbitrator with "exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of [the agreement] . . ." The briefing filed in these cases does not address this language either.

The arbitrator must determine whether plaintiff's claims are subject to the agreement. Based on defendant's alternative request, the court will stay the case pending receipt of status reports regarding the progress of arbitration.

Conclusion

Based on the foregoing, defendant's motion to dismiss or stay proceedings and compel arbitration [#7] is granted to the

extent provided herein. The case is stayed. The deputy clerk shall contact counsel and set an appropriate deadline for a joint status report regarding the progress of arbitration.

IT IS SO ORDERED.

DATED this 28th day of June, 2007.

s/ Michael R. Hogan
United States District Judge